



Federal Communications Commission  
Washington, D.C. 20554

October 21, 2005

DA 05-2742

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**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

WXON License, Inc.  
WDWB(TV)  
c/o Granite Broadcasting Corporation  
767 Third Avenue, 34<sup>th</sup> Floor  
New York, New York 10017

Re: WXON License, Inc.  
WDWB(TV), Detroit, Michigan  
Facility ID No. 74211  
File No. BRCT-20050601BHB

Dear Licensee:

This refers to your license renewal application for station WDWB(TV), Detroit, Michigan.

In the Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. Sections 303a, 303b and 394, Congress directed the Commission to adopt rules, *inter alia*, limiting the number of minutes of commercial matter that television stations may air during children's programming, and to consider in its review of television license renewals the extent to which the licensee has complied with such commercial limits. Pursuant to this statutory mandate, the Commission adopted Section 73.670 of the Rules, 47 C.F.R. § 73.670, which limits the amount of commercial matter which may be aired during children's programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. The Commission also reaffirmed and clarified its long-standing policy against "program-length commercials." The Commission defined a "program-length commercial" as "a program associated with a product, in which commercials for that product are aired," and stated that the entire duration of any program-length commercial would be counted as commercial matter for the purpose of the children's television commercial limits. *Children's Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991). The commercial limitations became effective on January 1, 1992. *Children's Television Programming*, 6 FCC Rcd 5529, 5530 (1991).

On June 1, 2005, you filed the above-referenced license renewal application for station WDWB(TV). In response to Section IV, Question 5 of that application, you certify that, during the previous license term, WDWB(TV) failed to comply with the limitations on commercial matter in children's programming specified in Section 73.670 of the Commission's Rules. In Exhibit 19 to that application, you indicate that station WDWB(TV) violated the children's

television commercial limits and policies on three occasions between September 24, 2002 and August 21, 2004. First, you state that on September 24, 2002, station WDWB(TV) broadcasted a thirty second commercial, inserted by the WB Network, for the Gameboy Advance E-Reader during the “Pokemon” program. You maintain that the commercial contained fleeting partial images of three “Pokemon” game cards displayed as three of six cards in a “fan” arrangement. According to your description, the partially hidden “Pokemon” cards appeared on screen for approximately one second, and only the letters “MON” were discernible on the three cards. You state that no “Pokemon” characters were displayed and the audio portion of the commercial made no reference to “Pokemon.” Second, you indicate that an overage of one minute and thirty seconds in duration occurred on October 18, 2003. You attribute this overage to errors on the part of the company that inserts commercial content into all WB Network programming and provides uplink services for satellite dissemination of network programming to the station and other WB Network affiliates. Third, you report that station WDWB(TV) broadcast on August 21, 2004, a thirty-second commercial for the “Yu-Gi-Oh” movie soundtrack during the “Yu-Gi-Oh” program. That commercial contained music and images of characters associated with the subject program and, as you acknowledge, resulted in a half-hour program-length commercial. You attribute this incident to human error. Finally, you describe the corrective measures taken after each incident to ensure future compliance.

As a preliminary matter, we note that Congress was particularly concerned about program-length commercials because young children often have difficulty distinguishing between commercials and programs. S. Rep. No. 227, 101<sup>st</sup> Cong., 1<sup>st</sup> Sess. 24 (1989). Thus, in *Children’s Television Programming*, the Commission made it clear that program-length commercials, by their very nature, are extremely serious violations of the children’s television commercial limits, stating that the program-length commercial policy “directly addresses a fundamental regulatory concern, that children who have difficulty enough distinguishing program content from unrelated commercial matter, not be all the more confused by a show that interweaves program content and commercial matter.”<sup>1</sup> 6 FCC Rcd at 2118. Accordingly, in interpreting and applying the Commission’s policies regarding program-length commercials, we are concerned about and dealing with the cognitive abilities of young children, not adults. *See, e.g., Scripps Howard Broadcasting Company (KNXV-TV)*, 12 FCC Rcd 19504, 19505 (MMB 1997) (*Scripps Howard*), *aff’g* 9 FCC Rcd 2547 (MMB 1994).

With respect to the station’s broadcast of the commercial for the Gameboy Advance E-Reader, although you contend that the “Pokemon” game cards appeared for one second during the commercial, it is well-established that the determination as to whether a particular program is a program-length commercial is not dependent on the duration of the appearance of the program-related product in the commercial announcement. The Commission has stated on numerous occasions that, where a commercial announcement includes a product related to the program in which the commercial is broadcast, then the program is a program-length commercial regardless

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<sup>1</sup> To avoid being considered a program-length commercial, commercial matter related to a children’s program must be separated from that program “by intervening and unrelated program material.” *Children’s Television Programming (Recon.)*, 6 FCC Rcd at 5099. To prevent confusion, the Commission “specifically note[d] that intervening commercial matter will not suffice as a separation device.” *Id.* at 5099 n.89.

of the duration of the appearance of the program-related product in the commercial. *UTV of San Francisco, Inc. (KBHK-TV)*, 10 FCC Rcd 10986, 10988 (1995); *see also WPIX, Inc.*, 14 FCC Rcd 9077 (MMB 1999) (commercial for “Spirit of Mickey” home video showing brief image of Donald Duck on cover of video aired during “Quack Pack” program); *Act III Broadcasting License Corp. WUTV(TV)*, 10 FCC Rcd 4957 (1995), *aff’d*, 13 FCC Rcd 10099 (MMB 1997) (commercial for a fast food restaurant promoting a trip to Disney World as a contest prize contained a brief image of Goofy and aired during the program “Goof Troop”). Moreover, we believe that, in the context of the cognitive abilities of young children, there is the potential for confusion between the Gameboy commercial and the “Pokemon” program regardless whether any “Pokemon” character is depicted given the image of a “Pokemon” game card contained in the commercial and the consequent likelihood that children may associate it with the program. Based on these circumstances, where there is a clear potential for confusion in the minds of young children, the Commission’s program-length policy is applicable. *Scripps Howard*, 12 FCC Rcd at 19506.

Regarding the reasons given for the conventional overage and one of the program-length commercials, the fact that they resulted from formats or errors which occurred in the programming supplied by station WDWB(TV)’s television network or were inserted into the program by station WDWB(TV)’s television network does not relieve WDWB(TV) of responsibility for the violations. In this regard, the Commission has consistently held that a licensee’s reliance on a program’s source or producer for compliance with our children’s television rules and policies will not excuse or mitigate violations which do occur. *See, e.g., Max Television of Syracuse, L.P. (WSYT(TV))*, 10 FCC Rcd 8905 (MMB 1995); *Mt. Mansfield Television, Inc. (WCAX-TV)*, 10 FCC Rcd 8797 (MMB 1995); *Boston Celtics Broadcasting Limited Partnership (WFXT(TV))*, 10 FCC Rcd 6686 (MMB 1995). Moreover, although you argue that the “Yu-Gi-Oh” program-length commercial resulted from a mislabeling error on the part of a station employee, the Commission has repeatedly rejected human error as a basis for excusing violations of the children’s television commercial limits. *See, e.g. LeSea Broadcasting Corp. (WHKE(TV))*, 10 FCC Rcd 4977 (MMB 1995); *Buffalo Management Enterprises Corp. (WIVB-TV)*, 10 FCC Rcd 4959 (MMB 1995); *Act III Broadcasting License Corp. (WUTV(TV))*, 10 FCC Rcd 4957 (MMB 1995); *Ramar Communications, Inc. (KJTV(TV))*, 9 FCC Rcd 1831 (MMB 1994). Furthermore, corrective actions may have been taken to prevent subsequent violations of the children’s television rules and policies, but that, too, does not relieve WDWB(TV) of liability for the violations which have occurred. *See, e.g., WHP Television, L.P. (WHP-TV)*, 10 FCC Rcd 4979, 4980 (MMB 1995); *Mountain States Broadcasting, Inc. (KMSB-TV)*, 9 FCC Rcd 2545, 2546 (MMB 1994); *R&R Media Corporation WTWS(TV)*, 9 FCC Rcd 1715, 1716 (MMB 1994); *KEVN, Inc. (KEVN-TV)*, 8 FCC Rcd 5077, 5078 (MMB 1993); *International Broadcasting Corp.*, 19 FCC 2d 793, 794 (1969).

While we consider any violation of our rules limiting the amount of commercial matter in children’s programming to be significant, the violations described in your renewal application appear to have been isolated occurrences. Although we do not rule out more severe sanctions for violations of this nature in the future, we have determined that an admonition is appropriate at this time. Therefore, based upon the facts and circumstances before us, we ADMONISH you for

the violations of the children's television commercial limits rule and policies described in station WDWB(TV)'s renewal application. We remind you that the Commission expects all commercial television licensees to comply with the limits on commercial matter in children's programming.

In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 309(k). Section 309(k) provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Communications Act or the Commission's Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.<sup>2</sup> If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”<sup>3</sup>

On balance, we find that WXON License, Inc.'s violation of Section 73.670 does not constitute a “serious violation” of the Commission's rules warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse. Further, we find that station WDWB(TV) served the public interest, convenience, and necessity during the subject license term.

Accordingly, IT IS ORDERED that, a copy of this Letter shall be sent by First Class and Certified Mail, Return Receipt Requested to WXON License, Inc. at the address listed above, and to its counsel, Tom W. Davidson, Esquire, Akin Gump Strauss Hauer & Feld LLP, 1333 New Hampshire Avenue, N.W., Washington, D.C. 20036.

Finally, IT IS ORDERED that, the application of WXON License, Inc., for renewal of license for station WDWB(TV), Detroit, Michigan (BRCT-20050601BHB), IS HEREBY GRANTED.

Sincerely,

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>2</sup> 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Order, Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, 11 FCC Rcd 6363 (1996).

<sup>3</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).